

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

IN RE: BOSTON SCIENTIFIC CORP.
PELVIC REPAIR SYSTEMS
PRODUCTS LIABILITY LITIGATION

MDL 2326

THIS DOCUMENT RELATES TO

Sherry Ann Kocsis, et al. v. Boston Scientific Corp.

2:18-cv-01148

MEMORANDUM OPINION AND ORDER

Pending is Defendant's Motion to Dismiss with Prejudice, filed by Boston Scientific Corporation ("BSC") on November 16, 2018. [ECF No. 6]. BSC asserts that plaintiffs' case should be dismissed with prejudice for failure to comply with court orders, including the failure to timely provide a Plaintiff Fact Sheet ("PFS") in violation of Pretrial Order Numbers 16 and 196. Plaintiffs, who are *pro se*, filed an untimely response on December 10, 2018. Plaintiffs state that they never received a request for a PFS and in any event, submitting to the current MDL procedure would undermine the plaintiffs' individual right to procedural due process, guaranteed by the Fifth Amendment's Due Process Clause. [ECF No. 7].

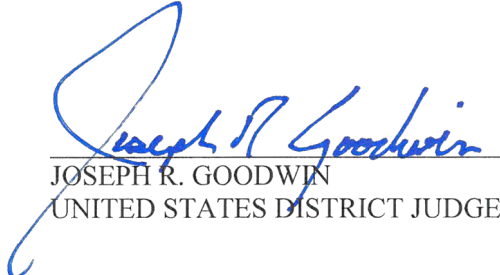
At the outset, the court notes that despite their objections, it was plaintiffs who chose to file their action directly into the MDL here in West Virginia. Furthermore, by Pretrial Order entered on October 31, 2018, in plaintiffs' case, plaintiffs were required to serve a PFS by November 15, 2018. [ECF No. 5]. The court finds, pursuant to Rules 16 and 37 of the Federal Rules of Civil Procedure and after weighing the

factors identified in *Wilson v. Volkswagen of Am., Inc.*, 561 F.2d 494, 503-06 (4th Cir. 1977), that this case should be dismissed without prejudice for plaintiffs' failure to serve a PFS.

Therefore, the court **ORDERS** that the motion to dismiss [ECF No. 6] is **GRANTED in part** to the extent BSC seeks dismissal and **DENIED in part insofar as BSC seeks dismissal with prejudice**. The court **ORDERS** that BSC is dismissed without prejudice. No other defendants remain, and the case is stricken from the docket and closed.

The court **DIRECTS** the Clerk to send a copy of this order to counsel of record and to the plaintiffs via certified mail, return receipt, and regular mail at their last known address.

ENTER: October 28, 2019


JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE